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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/021,194 | 10/30/2001 | Robert D. Sheldon | 021556.0137 | 9458 |

7590 01/24/2006

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| EXAMINER |
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KOSTAK, VICTOR R

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| ART UNIT | PAPER NUMBER |
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2614

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/021,194 | Applicant(s) SHELDON ET AL. | |
| | Examiner Victor R. Kostak | Art Unit 2614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7 and 10-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7 and 10-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 26-31 and 35 are objected to because of the following informalities:

a) in line 4 of claim 26, “*said first video node*” lacks antecedent basis. “Node” should probably be changed to –device—;

b) in the first line of claim 29, “the” should precede “diagnostic” (the examiner regrets not pointing these out earlier in prosecution). Appropriate correction is required.

2. Applicant's arguments with respect to the rejection based on Richard, III (and secondary teachings) have been considered but are moot in view of the new ground(s) of rejection.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 10-12, 14-17, 21-27, 29 and 30 are now rejected under 35 U.S.C. 103(a) as being unpatentable over Pugaczewski et al. in view of Carolan et al.

The system of Pugaczewski (noting Fig. 2) involves diagnosis of a CPE (consumer premises equipment) 16a, wherein a physical network interface is operable to receive data from CPE 16a; wherein tester system 12 which comprises plural associated internal components (and which can include PDU 18: col. 2 lines 42-46) can be considered by, or designated as a diagnostic tool by one of ordinary skill in the art, since it serves as a tool to access the data from CPE 16a as the data travels over a network (col. 2 lines 51-63). Internal to system 12 is means for carrying out diagnostic testing of the data obtained by system 12 (noting again col. 2 lines 51-

63; and noting further col. 3 lines 31-48). It is also noted that the testing is done on at the network layer, as well as the other layers (col. 2 lines 56-59).

Because Pugaczewski neither specifies nor excludes describing what the CPE can be, it would therefore have been obvious to test any device that can be considered a CPE, which covers any device capable of accessing information through a packet-switched network as noted by Carolan (col. 4 lines 41-46), and which therefore covers audio/video data devices.

In view of this, it therefore would have been obvious to carry out the testing by Pugaczewski of A/V data of this CPE being any suitable A/V device, therefore meeting claims 1 and 14.

As for claims 21, 26 and 29, at least one device is tested (16a) by at least one diagnostic node proximate thereto (tester 12), and the CPE 16a can be used in communication with another A/V device (noting again that a CPE can be any device that communicates by packet-switching, therefore necessarily being associated with at least a transmitting station and a receiving station). The examiner takes Official notice that digital A/V communication is typically done in compressed form for the clear purpose of maximizing data communication through as efficient a channel band as possible, thereby providing the benefit of making as much data available as quickly as possible to the destination.

Regarding claims 10-12, 15-17 and 22-25, the testing system 12 is also capable of communicating testing programs and results using the options of the Web (22) or an SNMP agent (at test unit 16a) and SNMP manager 26.

As for claim 27, the second device (either station 18 or 34) is in communication with testing system 12 and testing unit 16a.

As for claim 30, the diagnostic system 12 operates on a software module running on a server (We interface 22 supplies tester 12 with software that the user accesses by a GUI: col. 2 line 64 – col. 3 line 15).

4. Claims 2, 19, 20, 28 and 33-35 are now rejected under 35 U.S.C. 103(a) as being unpatentable over Pugaczewski et al. and Carolan et al., in view of Bahadiroglu.

As noted above, Pugaczewski allows for any CPE to be tested, and Carolan points out that a CPE can be any information appliance. Therefore, testing of any of typical data parameters would have been obvious to carry out using the system of Pugaczewski.

Bahadiroglu points out that jitter and latency are negative effects typical of A/V presentation and should therefore be compensated for upon detection thereof (section [0042]).

In view of this explicit teaching, it would therefore have been obvious to monitor for such negative effects in the system of Pugaczewski as modified by Carolan, for the clear purpose of ensuring adequate A/V presentation of the CPE device initially tested.

5. Claims 7, 13 and 31 are now rejected under 35 U.S.C. 103(a) as being unpatentable over Pugaczewski et al. in view of Carolan et al., in view of Wei (of record).

As noted above, since a CPE involves any typical information device and since packetized data is communicated, it would have been obvious to one of ordinary skill in the art to use a packet sniffer, as used by Wei in his diagnostic system (col. 6 lines 56-58; col. 8 lines 43-46) to identify packet data for monitoring.

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6. Claim 18 is now rejected under 35 U.S.C. 103(a) as being unpatentable over Pugaczewski et al. and Carolan et al., in view of Thomas et al.

Thomas notes that lip synching problems can arise in digital A/V communication and should therefore be identified and compensated for (e.g. col. 1 lines 12-16 and lines 51-62). It would have been obvious to test for any and all potential communication problems that can occur, and to accordingly compensate for them in order to provide adequate A/V presentation.

Since Pugaczewski allows for any CPE to be tested, and Carolan points out that a CPE can be any information appliance, then it would have been obvious to test for errors arising in the information device disclose by Thomas, specifically the noted lip-sync problems as expressly noted.

7. Claim 32 is now rejected under 35 U.S.C. 103(a) as being unpatentable over Pugaczewski et al. and Carolan et al., in view of Farra.

As discussed above, Pugaczewski allows for any CPE to be tested, and Carolan points out that a CPE can be any information appliance.

Since Farra mentions that a CPE terminal can be a teleconferencing device (col. 3 lines 46-50), it would have been obvious include that as the device under test in the system of Pugaczewski et al. and Carolan, for the purpose of diagnosing any potential problems and subsequently compensating for them, to ensure that the device will operate properly.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Or faxed to:

(571) 273-8300


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office whose telephone number is (703) 308-HELP.

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Victor R. Kostak
Primary Examiner
Art Unit 2614

VRK

A handwritten signature in black ink, appearing to read "V. R. Kostak", with a stylized flourish at the end.